

COUNCIL AGENDA: 8/26/14  
ITEM: 2.9

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Julie Edmonds-Mares

**SUBJECT:** SEE BELOW

**DATE:** August 4, 2014

Approved

Date

8/14/14

**COUNCIL DISTRICT:** 7

**SUBJECT: SECOND AMENDMENT TO AMENDED PARKLAND AGREEMENT  
WITH MONTECITO VISTA PROJECT OWNER, LLC.**

## **RECOMMENDATION**

Approve a second amendment to the Original Parkland Agreement with Montecito Vista Project Owner, LLC (Montecito), formerly with ROEM Development Corporation (ROEM), for Planned Development Permit PD06-062, associated with Tentative Map No. PT05-113 and Final Tract Map 9831 to revise Exhibit C – Fees and Credit Summary.

## **OUTCOME**

Approval of the recommendation in this memorandum would revise the Park Dedication Ordinance (PDO) fees and credits awarded in Exhibit C of the Original Parkland Agreement between the City and Montecito (formerly ROEM), see Attachment A. This revision accommodates a reduction in total residential units resulting from design changes and new ownership following the extended economic downturn in recent years. This amendment provides an additional two months for the developer, Montecito, to construct a two-acre turnkey park for completion in 2014-2015.

## **BACKGROUND**

Tentative Map Number PT05-113 and Final Tract Map Number 9831 authorize Montecito to construct 721 multifamily units and 117 single-family attached units on a 29.5 gross-acre site located on the southwesterly corner of Goble Lane and Monterey Road ("Project"). Chapter 19.38 of the San José Municipal Code (Parkland Dedication Ordinance) requires residential developers to dedicate land for neighborhood and community parks, construct park or recreational improvements, or pay a parkland fee in lieu of dedication or construction to help

meet the demand for neighborhood and community parkland generated by the development of new residential subdivisions ("Parkland Dedication Obligation").

In February 2007, the City entered into a Parkland Agreement ("Original Parkland Agreement") with ROEM requiring ROEM to construct park improvements and dedicate an approximately two-acre neighborhood park site (APN 455-09-061) to the City to satisfy their Parkland Dedication Obligation (PDO) for the Project. The proposed park elements consist of: a basketball court, volleyball courts, two (2) children's play lots, barbeque areas, picnic tables, stoves, trash receptacles, game table areas, an art monument, site furnishings and landscaping. The proposed park was to be constructed by February 27, 2012 under the terms of the Original Parkland Agreement.

On February 9, 2010, Council approved a strategy to delay construction of new parks until maintenance funding could be identified which included the turnkey park to be constructed by ROEM under the Original Parkland Agreement. Park construction schedules were to be extended to at least 2011-2012 or beyond.

Following Council action in May of 2010, the City approved the first amendment to the Original Parkland Agreement. This amendment allowed the developer to defer completion of the park until February 27, 2015.

In November of 2011, the City of San José Department of Parks, Recreation and Neighborhood Services (PRNS), consented to the assignment and assumption of the Parkland Agreements from ROEM to Montecito.

At the time of the initial approval of the Original Parkland Agreement in 2007, it was anticipated that 838 residential units and 69,051 square feet of private recreation facilities would be constructed. The actual unit count constructed is now anticipated to be 575 and the private recreation credit area will be 0 square feet.

## **ANALYSIS**

The development of the Montecito Vista Project during a period of severe economic downturn has resulted in ownership changes and a large scale deviation from the originally anticipated development timelines, unit counts and private recreation amenities. In addition, due to internal dynamics between the developer and landowners, the project has progressed in a phased manner for which the Original Parkland Agreement was not well suited. These conditions have led to piecemeal construction of the project site, with unit types and quantities that bear little resemblance to the development originally proposed.

The Original Parkland Agreement provides a credit for 69,051 square feet of private recreation facilities constructed, while 0 square feet were actually built for credit. This deviation appears to have occurred on a project-by-project basis with reconciliation now due from the developer,

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Montecito. When developers do not construct the actual private recreation facilities anticipated under the Parkland Agreement, they must pay in-lieu fees in compensation. Pursuant to the Original Parkland Agreement, this means that the developer would face roughly \$1 million of park in-lieu fees as a result of disparities in private recreation facilities and unit adjustments. However, considering that the actual number of units has decreased, with Montecito developing only 575 units of the originally planned 838 units, and being mindful of the difficult economic conditions weathered by the developer, PRNS has determined that a re-evaluation of fees is appropriate in this rare instance.

Park in-lieu (PDO/PIO) fees are calculated for development projects based upon a fee schedule adopted by City Council and adjusted regularly (Resolution No. 73587). This fee schedule is rooted in third-party property research and includes a calculation of average land cost per square foot. Land values identified in this research help to support the rational nexus and rough proportionality of park impact fees. Such empirical evidence is critical to ensuring fair taxation and aligns San José's PDO program with the spirit of the Quimby Act (Ca. Gov. Code §66477); legislation requiring developers to help mitigate the impact of land improvements.

As discussed, the developer and new owner have responded to market conditions by redesigning the project around what they feel is a more 'marketable' housing type. Using the 2013-14 PDO/PIO fee schedule, park in-lieu fees were calculated for the new housing types and reduced unit count, then updated to current value adjusted levels. During this assessment it became apparent that the Original Parkland Agreement did not specifically include affordable units into the total calculation, whereas 198 such units have been constructed and are now eligible for reduced park in-lieu fees of 50% (per Resolution No. 28804). The inclusion of affordable units and lower unit count would substantially reduce in-lieu fees from the Original Parkland Agreement and yield a balance that will be more than satisfied with the construction of the proposed turnkey park. With respect to the Department's flexibility and the mutual goal of a completed park, the Developer has proposed to fully construct the 'Monte Vista Park' (formerly known as Montecito Vista Park) in order to satisfy their remaining obligation.

The second amendment to the Original Parkland Agreement with Montecito will satisfy Montecito's parkland obligation through the construction of a 2.0 acre turnkey park, see Attachments B and C. Private recreation credits, previously required in the Original Parkland Agreement, are no longer necessary to satisfy the developer's obligation and may be provided at their discretion. This amendment also extends the time to construct the new turnkey park by two months to April 30, 2015, see Attachment A. All other terms and conditions of the Original Parkland Agreement not modified by the first amendment (May 2010) will remain in place.

### **EVALUATION AND FOLLOW UP**

This memo will not require any follow-up from staff.

## **POLICY ALTERNATIVES**

***Alternative #1: Not approve the second amendment to the Original Parkland Agreement with Montecito.***

**Reason for not recommending:** Residents living in the existing Montecito Vista development would likely be impacted by further delays in full build-out of the community and turnkey park construction and the developer may consider default.

## **PUBLIC OUTREACH/INTEREST**

- ☐ **Criterion 1:** Requires Council action on the use of public funds equal to \$1,000,000 or greater. **(Required: Website Posting)**
- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, this memorandum will be posted on the City's website for the August 26, 2014 City Council agenda.

## **COORDINATION**

This memorandum has been coordinated with City Attorney's Office, City Manager's Budget Office, and the Department of Planning, Building and Code Enforcement.

## **FISCAL/POLICY ALIGNMENT**

This Council item is consistent with the San José Greenprint 2009 Update, page 140, which depicts a future park on the proposed development site.

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### **COST SUMMARY/IMPLICATIONS**

The operating and maintenance costs for this facility are anticipated to be \$15,000 in 2014-2015 and \$37,000 annually. This funding was included in the 2015-2019 Five-Year General Fund Forecast, released on February 28, 2014 and the 2014-2015 Adopted Operating Budget, approved by the City Council on June 17, 2014.

### **BUDGET REFERENCE**

No funding is needed to approve the second amendment to the Original Parkland Agreement with Montecito Vista, LLC.

### **CEQA**

Resolution No. 72877 and associated addenda (adopted August 30<sup>th</sup>, 2005).  
Goble Lane Mixed Use Development Project EIR (PDC02-066).

/s/

JULIE EDMONDS-MARES  
Director, Parks, Recreation and  
Neighborhood Services Department

For questions please contact Marybeth Harasz, Division Manager, (408) 793-4183.

## ATTACHMENT A

RECORDING REQUESTED  
BY CITY OF SAN JOSE:

When Recorded, Return To:  
City of San José  
200 East Santa Clara Street  
San José, CA 95113  
Attn: City Clerk, 2<sup>nd</sup> Floor West Wing

Final Tract No. 9831

**SECOND AMENDMENT TO PARKLAND AGREEMENT  
FOR  
TENTATIVE MAP NO. PT05-113  
BETWEEN  
CITY OF SAN JOSE  
AND  
THE MONTECITO VISTA PROJECT OWNER, LLC  
(Chapter 19.38 of SJMC)**

This Second Amendment ("Second Amendment") to Parkland Agreement for Tentative Map No. PT05-113 is made and entered into by and between the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and The Montecito Vista Project Owner, LLC, a Delaware limited liability company authorized to business in California ("Developer") as of the date of execution by City.

## RECITALS

- A. ROEM Development Corporation ("Original Developer") filed Tentative Map No. **PT05-113** (the "Tentative Map") with the City's Planning Department for the subdivision of real property located at the southwesterly corner of Goble Lane and Monterey Highway ("Project") in the City of San José.
- B. In accordance with the provisions of Chapter 19.38 of the San José Municipal Code ("Code"), the Tentative Map contains a condition requiring the payment of fees and/or the dedication of land for park purposes ("Parkland Dedication Obligation").
- C. In order to satisfy the Parkland Dedication Obligation for the units included in the Final Map for the Final Tract identified above, Original Developer and City entered into a Parkland Agreement on February 27, 2007, entitled "Parkland Agreement for Tentative Map No. PT05-113 Between City of San Jose and ROEM Development Corporation" ("Original Parkland Agreement") under which Original Developer agreed to satisfy its Parkland Dedication Obligation relating to Tentative Map No. PT05-113 by constructing park improvements on approximately 87,120 square feet of real property located near the southwesterly corner of Goble Lane and Monterey Highway located in the City of San José and dedicating the completed park to the City (APN 455-09-061) ("Park Site").
- D. The Original Parkland Agreement was recorded in the Office of the Santa Clara County Recorder on March 7, 2007 as document 19330255. The Final Map for Tentative Map No. PT05-113 was approved by City Council and recorded in the Santa Clara County Recorder's Office on April 19, 2006. Under the terms of the Original Parkland Agreement, the completion of park improvements and dedication of the Park Site from Original Developer to City was to occur by the fifth year anniversary of the date of execution of the Original Parkland Agreement, which was on or before February 27, 2012.

- E. On February 9, 2010, City Council approved a recommendation to defer construction on certain park and recreational capital projects, including the Park Site, until maintenance funding is identified.
- F. On April 27, 2010, the City Council approved the First Amendment to Parkland Agreement ("First Amendment"); the Original Parkland Agreement, as amended by the First Amendment, constitutes the "Parkland Agreement" to extend the date of the construction of improvements and transfer of the completed park (APN 455-09-061) from Original Developer to City for an additional three (3) years from the date of the execution of the Original Parkland Agreement to February 27, 2015 to allow additional time for City to identify maintenance funding for the Park Site.
- G. The First Amendment was recorded in the Office of the Santa Clara County Recorder on May 7, 2010 as document 20704565.
- H. Subsequent to the approval of the Original Parkland Agreement and First Amendment, the City's approval of a number of Planned Development Permits (PD 08-061 & PD12-040) & Tentative Maps (PT13-001, PT13-035 & PT13-048) has resulted in a reduction in the total number of dwelling units in the development from 838 to 575. This unit count reduction translates to a significant decrease in the Project's parkland obligation.
- I. On September 29, 2011, the Original Developer sold its interest in the subject property and development to Developer. Original Developer has requested that the City execute and record a release of the Parkland Agreement obligations under the Original Parkland Agreement and subsequent amendments as Developer is the current owner of the Project. City and Developer desire to amend the Parkland Agreement to (i) release Original Developer from the obligations of the Original Parkland Agreement and subsequent amendments and assign the Parkland Agreement to Developer; (ii) amend Exhibit B of the Original Parkland Agreement identifying soil requirements and conditions of acceptance; (iii) amend Exhibit C of the Parkland Agreement identifying the fees



and credits of the Project; and (iv) extend the date of the construction of improvements and transfer of the completed park (APN 455-09-061) from Developer to City for an additional two months from the date of the execution of the Original Parkland Agreement to April 30, 2015.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Second Amendment and for valuable consideration, receipt and sufficiency of which is hereby acknowledged, City and Developer hereby agree to amend the amended Parkland Agreement as follows:

**SECTION 1.** On or about September 29, 2011 city consented to the assignment of the Original Parkland Agreement, as amended, from ROEM Development Corporation to The Montecito Vista Project Owner, LLC and hereby releases Original Developer from the obligations set forth in the Parkland Agreement. Any reference to Developer in the Parkland Agreement, as amended, shall hereinafter refer to The Montecito Vista Project Owner, LLC.

**SECTION 2.** Section 2 "OFFER OF DEDICATION; DESIGN AND DEVELOPMENT OF PARK IMPROVEMENTS", SUBSECTION E is amended in its entirety to read as follows:

"E. The Park Improvements shall be completed and the Park Site dedicated to City on or before April 30, 2015. The City's Director may, at the City Director's discretion, grant extensions of the completion requirement specified in this subsection."

**SECTION 3.** EXHIBIT B, "DESIGN AND CONSTRUCTION REQUIREMENTS", Section I (A)(3), is added to read as follows:

, "3. Public Works Standard Specifications – Section 329100 Planting Preparation. Soil specifications, survey requirements, and resulting soil amendment procedures prescribed in the above guidelines, shall be applicable to this agreement. Prior to construction of the park, this

document will be made available to the Developer through Public Works."

**Section 4.** Exhibit B, "DESIGN AND CONSTRUCTION REQUIREMENTS", SECTION II (C)(2), is amended in its entirety to read as follows:

1. "City's approval of the Plans shall not release Developer of the responsibility for the correction of mistakes, errors or omissions contained in the Plans, including any mistakes, errors or omissions which may be the result of circumstances unforeseen at the time the Plans were developed or approved. If, during the course of construction of the Park Improvements, the Director of PW determines in the Director of PW's reasonable discretion that the public safety requires modification of, or the departure from, the Plans, the Director of PW shall have the authority to require such modification or departure and to specify the manner in which the same may be made. The parties acknowledge that the Plans, once approved by the Director of PW, shall be final and that, except as expressly provided in this subsection, no revisions to the Plans shall be permitted for any reason whatsoever. Prior to construction of the park, the Developer shall provide the City with original copies of all soil surveys along with recommended soil amendments. The City shall inspect the soils on site for construction debris before construction may begin."

**Section 5.** Exhibit B, "DESIGN AND CONSTRUCTION REQUIREMENTS", Section II (G)(3), is added to read as follows:

- , "3. All soils on site shall be provided to the City free and clear of all construction debris and be amended in accordance with recommendations from the soil reports and agricultural soil surveys. Additional soil amendments including, but not limited to, mycorrhizal inoculum and humic acid, may be provided at the Developer's discretion and in consultation with the City."

**SECTION 6.** EXHIBIT C, "FEES AND CREDIT SUMMARY" is amended to read as shown in **Revised Exhibit C**, attached and incorporated into this Second Amendment.

**SECTION 7.** All of the terms and conditions of the Original Parkland Agreement and First Amendment not modified by this Second Amendment shall remain in full force and effect.

WITNESS THE EXECUTION HEREOF the day and year hereinafter written.

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal  
corporation

\_\_\_\_\_  
JON CALEGARI  
Deputy City Attorney

By: \_\_\_\_\_  
TONI TABER,  
City Clerk

Date: \_\_\_\_\_  
200 East Santa Clara Street  
San Jose, CA 95113

"DEVELOPER"

THE MONTECITO VISTA PROJECT  
OWNER, LLC, a Delaware limited liability  
company

By: Montecito Vista Operator, LLC,  
a Delaware limited liability company,  
its Manager

By: Montecito Vista Communities  
Manager, LLC, a California limited  
liability company, its Manager

By: KPMW Integral, LLC,  
a California limited liability  
company, its Manager Member

By: \_\_\_\_\_  
C. Evan Knapp  
Authorized Representative

888 San Clemente Drive, Suite 100  
Newport Beach, CA 92660  
(949) 720-3612

- All Subdivider's signatures must be accompanied by an attached notary acknowledgement.
- Proof of authorization for Subdivider's/Owner's signatures is required to be submitted concurrently with this Second Amendment.

**REVISED EXHIBIT C**

**FEES AND CREDIT SUMMARY**

Goble Lane Turnkey Park Site, Montecito Vista, Tract 9831

Revised Unit Count Total Parkland Obligation = 5.13 acres

A.	<b>Dedication of 87,120 square feet of land to the City as public parkland yields:</b> <b>201 (number of units) x 3.31 (persons per household) x .003 (Parkland Requirement Population) =</b> <b>2.0 (Parkland Dedication)</b>		201 SFA units	Credits
B.	<b>Park Improvement costs on 2.0 acre(s) of parkland yields:</b> <b>\$2,435,700 (Total Estimated Park Improvement Costs) /</b> <b>\$8,700 (Fee per SFA single- family attached unit) AND</b> <b>\$3,050 (Fee per MF5+ multiple-family low income unit) =</b> <b>210 SFA units AND 198 MF5+ Low Income units (= Total No. of Unit Credits)</b>		210 SFA and 198 MF5+ low income units	Credits
C.	Private Recreational Credits		0	Credits
	<b>Total Credits</b> provided for under this Agreement:		411 SFA & 198 MF5+ Low Income units	Credits
	<b>Total number of units in Development</b>		377 SFA & 198 MF5+ Low Income Units	Units
	<b>Difference (if any)</b>		0	Units

FEES AND CREDIT SUMMARY page two

**PARK IMPROVEMENT CONSTRUCTION COSTS**

(rounded to nearest dollar)

Park Improvement Construction Costs	\$	1,740,334.00
<b>OTHER RELATED COSTS:</b>		
Construction w/ 4% annual inflation (10% total)	\$	174,034.00
Design Fee Allowance	\$	266,332.00
City's Plan Review and Inspection Fee	\$	250,000.00
City's Land Transfer Fee	\$	5,000.00
<b>Estimated Total Project Costs for the Park Improvements</b>	<b>\$</b>	<b><u>2,435,700.00</u></b>

**FINAL FEES DUE**

Amounts Due to City:

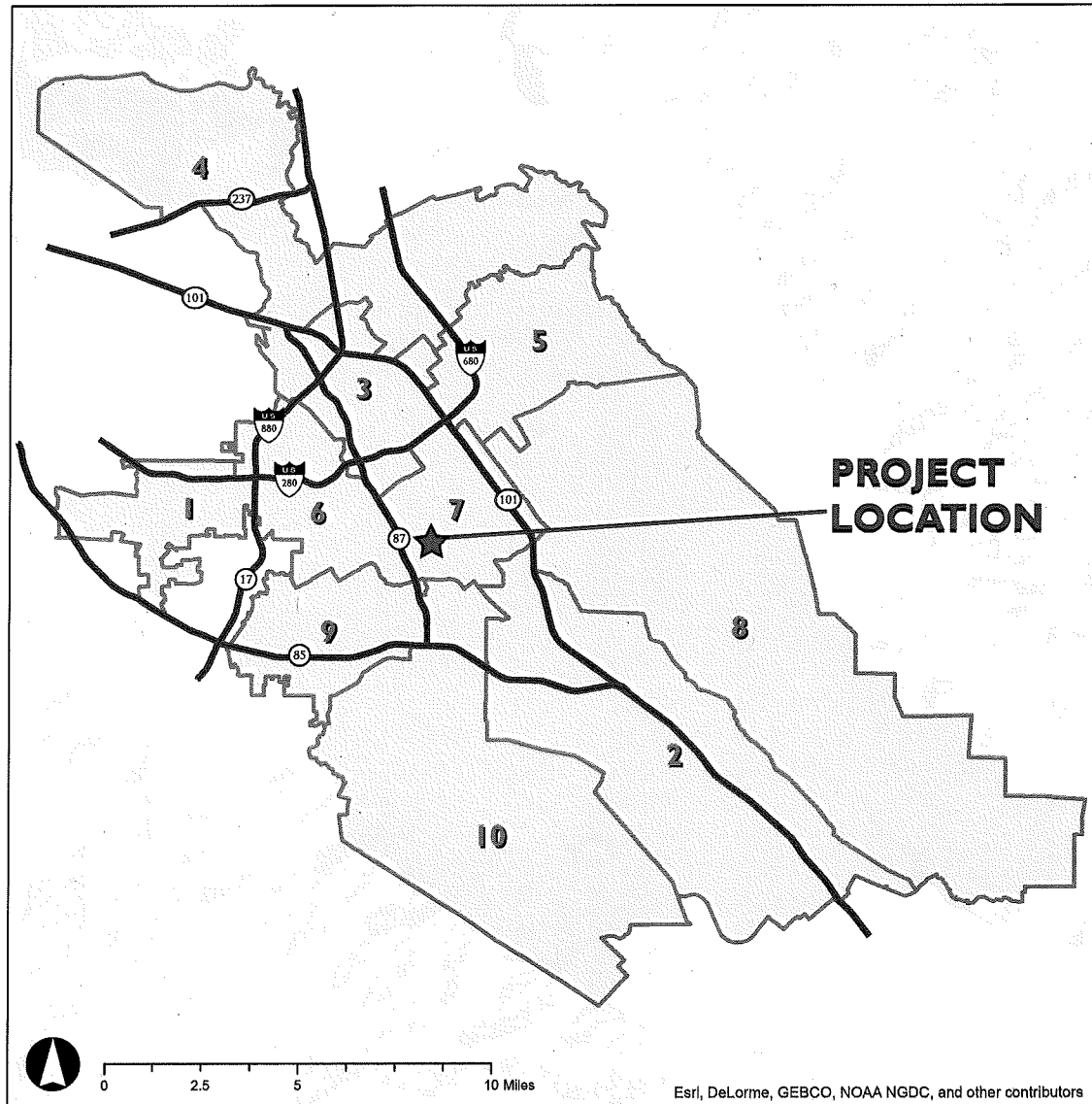
Number of units subject to fees	= 0 units	
In Lieu Park Fees Due	\$	0.00
City's Plan Review and Inspection Fee for the Park	\$	250,000.00
Land Transfer Fee	\$	5,000.00
<b>Total Amount of Fees Due to City</b>	<b>\$</b>	<b><u>255,000.00</u></b>

**PAYMENT INSTRUCTIONS**

Any parkland in-lieu fees due for units not covered under this Agreement shall be paid directly to: City of San José – Development Services, 200 E. Santa Clara Street, San Jose, CA, 95113.

The City's Review and Inspection Fees for the Park Improvements shall be paid directly to: City of San Jose, Department of Parks, Recreation and Neighborhood Services, 200 E. Santa Clara Street, San Jose, CA, 95113.

**ATTACHMENT B**  
**Site Context**



**ATTACHMENT C  
PROJECT OVERVIEW**

